

#### **§ 90.44**

(ii) Attempt to achieve voluntary compliance satisfactory to the agency, if the investigation indicates a violation.

(iii) Arrange for enforcement as described in § 90.47, if necessary.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24322, May 9, 2005]

#### **§ 90.44 Compliance reviews.**

(a) Each agency shall provide in its regulations that it may conduct compliance reviews, pre-award reviews, and other similar procedures which permit the agency to investigate, and correct, violations of the Act without regard to its procedures for handling complaints.

(b) If a compliance review or pre-award review indicates a violation of the Act, the agency shall attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, the agency shall arrange for enforcement as described in § 90.47.

#### **§ 90.45 Information requirements.**

Each agency shall provide in its regulations a requirement that the recipient:

(a) Provide to the agency information necessary to determine whether the recipient is in compliance with the Act; and

(b) Permit reasonable access by the agency to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether a recipient is in compliance with the Act.

#### **§ 90.46 Prohibition against intimidation or retaliation.**

Each agency shall provide in its regulations that recipients may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the agency's investigation, conciliation, and enforcement process.

#### **45 CFR Subtitle A (10–1–08 Edition)**

#### **§ 90.47 What further provisions must an agency make in order to enforce its regulations after an investigation indicates that a violation of the Act has been committed?**

(a) Each agency shall provide for enforcement of its regulations through:

(1) Termination of a recipient's Federal financial assistance under the program or activity involved where the recipient has violated the Act or the agency's regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or the agency's regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency which will have the effect of correcting a violation of the Act or implementing regulations.

(b) Any termination under paragraph (a)(1) shall be limited to the particular recipient and particular program or activity receiving Federal financial assistance or portion thereof found to be in violation of the Act or agency regulations. No termination shall be based in whole or in part on a finding with respect to any program or activity which does not receive Federal financial assistance.

(c) No action under paragraph (a) of this section may be taken until:

(1) The head of the agency involved has advised the recipient of its failure to comply with the Act or the agency's regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the head of the agency involved has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(d) An agency may defer granting new Federal financial assistance to a